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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,088	05/25/2001	Jere F Irwin	IR3-023	5475

21567 7590 04/26/2002

WELLS ST. JOHN P.S.  
601 W. FIRST  
SUITE 1300  
SPOKANE, WA 99201-3828

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/866,088

Applicant(s)

IRWIN, JERE F

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramirez et al. (Ramirez).

Ramirez discloses a plastic foam rectangular tray for food with a bottom and side walls, the side walls have an inclined lower section and an inclined upper section that terminates in an outwardly extending lip, the upper section having internal inclined corner surfaces extending upward and outward to the lip, the inclined corner surfaces are inclined from a vertical line at angle alpha of 15-40 degrees which makes an angle in the range of 105 degrees ( $90 + 15 = 105$ ) to 130 degrees ( $90 + 40 = 130$ ) with the bottom wall.

Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by LaFleur.

LaFleur discloses a plastic foam rectangular meat tray with a bottom and side walls, the side walls have an inclined lower section and an inclined upper section that terminates in an outwardly extending lip, the upper section having internal inclined corner surfaces extending upward and outward to the lip, the upper sections of the side walls have inside reinforcing ribs formed therein in which the inclined corner surfaces are indented into the ribs at the corners of the side walls. The angle of inclination appears to be between 110-140 degrees with respect to the bottom.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramirez.

Ramirez discloses the invention except for the 94 – 100 degrees limitation. Ramirez discloses 105 degrees and above. The present application doesn't assign any criticality to the angles stated. It is generally known that a steeper angle of inclination will act to restrict access to the container by making items near the edge or corner of the bottom less accessible and harder to reach. It would have been obvious to make the angle more steep to fall within the 94-100 degree range in order to restrict access to the container.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramirez or LaFleur in view of Reskow ('858) (Reskow).

The reference both disclose the invention except for the greater than 90 degree arc. Reskow discloses an arc for access channels 50, 52, 54 and 56 which is greater than 90 degrees. It would have been obvious to add access channels with an arc of greater than 90 degrees in order to provide easier access and gripping of the contents by allowing a finger to scoot beneath items in the tray.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramirez in view of Corelli.

Ramirez discloses the invention except for the two different angles of inclination with the bottom wall, one for the lower section of 110-140 degrees and another for the inclined corner surfaces of the upper section of 94-105 degrees. Corelli teaches a container having two different angles of inclination, one less steep for the lower section and one more steep for the upper

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section as well as the upper corner sections. No criticality has been assigned for the angles stated. It would have been obvious to modify Ramirez to have two different angles of inclination in order to form a lower section and upper section to designate different chambers of the container.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaFleur.

This rejection is made in the event that the angle of inclination which is not stated is deemed not to fall within the 110-140 degree range.

Ramirez discloses the invention except for the angle of inclination. No criticality has been assigned to the stated angle. It would have been obvious to modify the angle to be steeper to fall within the 110-140 degree range in order to restrict access to the tray's contents.

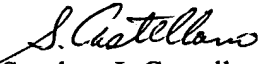
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc  
April 23, 2002